

B31.08 Damages--Wrongful Death--Contributory Negligence--More Than One Beneficiary

If you find that [beneficiary and/or decedent] contributed to the total proximate cause of the death of the decedent you shall determine the percentage of contributory fault of [beneficiary and/or decedent].

[If you find that the contributory (fault) (negligence) of the decedent was more than 50% of the total proximate cause of the death of the decedent, then you shall enter a verdict in favor of the defendant(s). If you find that the contributory fault of the decedent was 50% or less of the total proximate cause of the death of the decedent, then your verdict should be for the plaintiff and you will reduce damages in the manner stated in the instructions.]

[The contributory fault of a beneficiary affects his/her right to recover damages.]

If you find that the contributory fault of [beneficiary] was more than 50% of the total proximate cause of the death of the decedent, then [beneficiary] shall not recover damages from this suit. However, you are not to consider this fact in arriving at the total amount of damages, if any, in this case.

If you find that the contributory fault of [beneficiary] was 50% or less of the total proximate cause of the death of the decedent, his/her damages shall be reduced in that proportion and the Court shall make the adjustments required by law with respect to the recovery of [beneficiary].

Notes on Use

This instruction should be used whenever there is an issue of contributory fault of one or more of several of the beneficiaries on behalf of whom the suit is brought. If there is no issue of the decedent's contributory fault, the second paragraph should not be used. If contributory fault of several beneficiaries is in issue the instruction should be amended.

Comment

Contributory fault of a beneficiary no longer bars recovery, but will only reduce that beneficiary's recovery if no greater than 50% of the total fault. 740 ILCS 180/2. The jury's verdict will be adjusted by the Court after hearing on the issue of dependency. See provisions of 740 ILCS 180/2 for the proper procedure. If the contributory fault of the beneficiary is more than 50% of the total fault, that beneficiary takes nothing and the percentage of dependency the trial judge finds for that beneficiary will inure to the benefit of the defendant. If the contributory fault of the beneficiary is not more than 50% of the total fault, the damages he would recover based on the percentage of dependency are reduced by his fault, thus reducing the total judgment amount payable by the defendant.